



March 18, 2005

COPY

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re\ Application of: Robert Lauter, Terry M. Valmassoi,  
Samuel K. Badiac and Elmer C. Herbert

Appln. No.: 10/671,646 Examiner: C. Phillips

Filed: September 24, 2003 Group Art Unit: 3751

For: COMBINATION SPA AND  
ENTERTAINMENT SYSTEM

(Atty. Docket No. 25514-C USA)

RULE 131 DECLARATION OF TERRY M. VALMASSOI

Commissioner for Patents  
Mail Stop Amendment  
P. O. Box 1450  
Alexandria, VA 22313-1450

Sir:

I, Terry M. Valmassoi, declare and state that:

1. I am one of four co-inventors named in the above-identified patent application. I have a degree in Finance from California State University (Long Beach), awarded in 1983. I have been involved in the hot tub industry since 1978. I have been employed by Master Spas, Inc., the assignee of the application, for the past nine years where I am presently Executive Vice President.

2. I was closely involved in the design, development and marketing of the invention recited in the claims of the above-identified application (hereafter the "Master Spas design"). I was, in fact, responsible for obtaining UL approval for the Master Spas design, which was awarded in March of 2001.

3. The claims of the application are rejected as obvious over Japanese Patent Publication JP 404285511 A to Nomura in view of an information item disclosed to the Patent

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Office and obtained from a web site operated by Cal Spas, located at 1462 East Ninth Street, Pomona, California. The Cal Spas information item discloses a spa and entertainment system (the "Cal Spas design") that appears to be substantially identical to the Master Spas design.

4. The Cal Spas information item is not a valid reference because the Master Spas design predates the Cal Spas design. The Cal Spas design appears to be a copy of the Master Spas design as one would conclude from the facts presented below.

5. A working prototype of the Master Spas design incorporating all of the features recited in the claims of the present application was shown to a group of 30 sales representatives and key Master Spas dealers at an executive council meeting held at the Master Spas factory in Fort Wayne, Indiana, on June 5, 2000. The meeting was a confidential disclosure to selected associates of Master Spas providing a preview of new products being developed.

6. Between June and November of 2000, work continued on the Master Spas design including the sourcing of components, the building of molds and tooling, operational testing and efforts to meet UL requirements.

7. A production unit of the Master Spas design was introduced to all Master Spas dealers (approximately 150 in number) at the Master Spas dealer meeting at the Rosen Plaza Hotel in Orlando, Florida, on November 6, 2000.

8. The production unit of the Master Spas design was introduced to the pool and spa industry at the National Spa and Pool Industry (NSPI) Tradeshow at the Orange County

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Convention Center in Orlando, Florida, on November 8, 2000. I personally attended this show and visited the Cal Spas exhibit, which did not display the Cal Spas design depicted in the aforementioned Cal Spas information item.

9. I first saw the Cal Spas design at the Aqua Tradeshow held at the Las Vegas Convention Center on February 6, 2001 in Las Vegas, Nevada. Although they were showing the design, the spa was not yet in production, and I believe they were not delivering these units to dealers until late spring.

10. In view of the extreme closeness of the Cal Spas design to the Master Spas design, features of which appear identical, one can only conclude that the Cal Spas design is a copy of the Master Spas design derived from information obtained from either the executive council meeting of June 5, 2000 (in violation of confidentiality agreements and understandings) or the aforementioned NSPI tradeshow in November of 2000.

11. I hereby declare that all statements made herein of my knowledge are true and that all statements made on information and belief are believed to be true and further that the statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Date

3/18/05

Terry M. Valmassoi